

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

JOSHUA MCCOY, ET AL.

Plaintiffs-Appellees

v.

Case No. 23-2085

**BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES, ET AL.**

Defendants-Appellants

**APPELLEES' RESPONSE IN OPPOSITION TO APPELLANTS' MOTION TO
CONSOLIDATE**

COME NOW, the Appellees, Mr. Joshua McCoy, Mr. Tyler McGrath, Mr. Ian Shackley, and Mr. Justin Fraser, by and through counsel, and on behalf of the Class certified and similarly situated, respectfully submit this Response in Opposition to the Appellants' Motion to Consolidate this appeal for the purposes of oral argument. In furtherance of their response in opposition, the Appellees state the following:

1. The Appellants filed their Opening Brief in this matter on December 22, 2023.
2. Prior to such filing, the Appellants filed the pending motion to consolidate this matter for the purposes of oral argument but not for briefing.

3. The Appellees' deadline for filing their Response Brief is January 22, 2024.
4. The Appellees intend to file such Response prior to their deadline, in addition to a motion for this Court to consider this case pursuant to a hearing *en banc*.
5. Such motion will be made in good faith due to the consideration of fundamental constitutional questions, the national implications of a nationwide class-action and injunction, and the fact that a similar case was decided via split-panel decision in *Hirschfeld v. BATFE, et al.*, 5 F.4th 407 (4th Cir. 2021); vacated for mootness, 14 F.4th 322 (4th Cir. 2021).
6. The Appellants' have cited errors in this appeal which are materially different than those presented in *Brown v. ATF*, No. 23-2275, particularly as they relate to the district court's order granting class certification.
7. By consolidating this case with *Brown* in lieu of denying the motion or holding *Brown* in abeyance pending the outcome of this case, the merits of this matter will be delayed for consideration by the court, will run the risk of confusion for the

- purposes of considering the Appellees' forthcoming motion for *en banc* review, and will infuse a separate issue concerning merits of class certification into an unrelated matter.
8. Additionally, it will unnecessarily hinder the review of this case due to the scheduling process of *Brown* and an inevitably delayed oral argument.
 9. By doing such, it runs the risk of adding to the efforts of judicial staff and the judiciary by complicating the matters before the court.
 10. A nationwide injunction is an issue in the underlying case which presents claims of infringement of fundamental civil liberties and there is an interest in seeking a resolution in the most timely manner possible.
 11. Complications from the Appellants' proposed bifurcated, consolidated oral argument will not only pose a risk of relegating the Appellees to arguing or focusing solely on the issues of class certification instead of the merits of their case involving the Second Amendment, but will pose a material risk of confusing the positions of the parties presented to the Court.

12. Respectfully, the Appellees believe this matter will be best resolved via consideration by the Court *en banc*, but even if the forthcoming motion for *en banc* review is not granted, review of the *Brown* case would be most appropriately held in abeyance given the merits of such case being fully encompassed and defended by the Appellees and the Class that has been certified. WHEREFORE, the Appellees respectfully request for this honorable Court to DENY the Appellants' motion to consolidate the case.

Respectfully submitted,

_____/s Elliott Harding_____

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2023, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

_____/s Elliott Harding_____

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CERTIFICATE OF COMPLIANCE

I certify that this motion to consolidate, filed on December 13, 2023, complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d), because it contains 537 words according to the count of Microsoft Word and is printed in Century Schoolbook 14-point font.

_____/s Elliott Harding_____

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